No. 80-193

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HENRY BUCZYNSKI, ALEX BORUSOVIC and OTHER RETIREES SIMILARLY SITUATED,
Petitioners,

v.

THE GENERAL MOTORS CORPORATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

MOTION OF ERISA INDUSTRY COMMITTEE (ERIC) FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENT AND BRIEF *AMICUS CURIAE* OF THE ERISA INDUSTRY COMMITTEE (ERIC) IN SUPPORT OF THE RESPONDENT

GEORGE J. PANTOS
1919 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 828-5000

Counsel of Record
for Amicus Curiae
ERISA Industry Committee

Of Counsel:

VEDDER, PRICE, KAUFMAN,
KAMMHOLZ & DAY
1919 Pennsylvania Ave., N.W.
Washington, D.C. 20006

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-193

HENRY BUCZYNSKI, ALEX BORUSOVIC and
OTHER RETIREES SIMILARLY SITUATED,
Petitioners,

v.

THE GENERAL MOTORS CORPORATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

MOTION OF ERISA INDUSTRY COMMITTEE (ERIC) FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The ERISA Industry Committee (ERIC), a non-profit corporation of 1919 Pennsylvania Avenue, N.W., Washington, D.C. 20006, respectfully moves this Court, pursuant to Rule 36 of the United States Supreme Court, for permission to file the attached brief *amicus curiae* for the reasons set forth below, which also disclose the interest of the *amicus*.

1. This motion is necessitated by the refusal of the Petitioners to consent to the filing of a brief by ERIC as *amicus curiae*.

2. The ERISA Industry Committee (ERIC) is a nonprofit corporation whose members constitute an association of more than 100 major corporations engaged in a wide cross-section of American business, each of which maintains one or more retirement plans for the benefit of their employees. In all, the companies represented in ERIC maintain a total of over 750 separate retirement plans which presently pay benefits to some 1.5 million retirees and other beneficiaries. The approximately 8.5 million participants (employees, retirees, and other beneficiaries) of retirement plans sponsored by ERIC members represent about 20 percent of all participants in private pension plans.[1] Thus, ERIC views are representative of a wide cross-section of major retirement plan sponsors in the private plan community. Through ERIC, these companies coordinate their views and provide practical information and recommendations to government on how the private pension system functions, and on the impact of government regulations and interpretations under the Employee Re-

---

[1] Comprehensive data regarding private pension programs and participants covered by them is not available. The statistics cited herein regarding plans of ERIC members have been principally derived from the Plan Descriptions (Forms EBS-1) filed with the Labor Department. It is generally accepted that there are somewhere between 30 and 45 million participants in private pension programs. *See, e.g.*, H.R. Rep. No. 807, 93d Cong., 2d Sess. 3 (1974); S. Rep. No. 383, 93d Cong., 1st Sess. 2-3 (1973); Statement of Gregory J. Ahart, Director, Human Resources Division, United States General Accounting Office, Before the Subcomm. on Retirement Income and Employment of the House Select Comm. on Aging, Comm. Pub. No. 95-138, 95th Cong., 2d Sess. 5-6 (Feb. 27, 1978).

tirement Income Security Act of 1974 ("ERISA") on pension plan participants and plan sponsors.

3. Many of the ERIC members maintain qualified pension plans containing provisions authorizing the integration of workers' compensation benefits with pension plan benefits, the validity of which is to be determined by this Court.

4. The validity of such provisions is of great importance to ERIC members in that any holding that such benefit integration provisions are unlawful could well threaten the stability of private pension plans and their capability to provide real benefits to participants.

5. The views of *amicus* ERIC are particularly important in this action because of the large number of plan sponsors represented by this organization. This case involves significant matters of policy in the private pension system and presents important questions of first impression involving interpretations of ERISA.

WHEREFORE, the ERISA Industry Committee respectfully moves for permission to file the attached brief *amicus curiae*.

Respectfully submitted,

GEORGE J. PANTOS
1919 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Counsel of Record
for Amicus Curiae
ERISA Industry Committee

Dated: January 30, 1981

TABLE OF CONTENTS

	Page
BRIEF	1
INTEREST OF THE *AMICUS CURIAE*	2
POSITION OF THE *AMICUS CURIAE*	2
SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. ERISA § 203(a) Does Not Preclude the Integration of Workers' Compensation Benefits With Private Pension Plan Benefits	5
II. ERISA Preempts State Regulation of Employee Benefit Plans Including N.J. Stat. Ann. 34:15-29, As Amended By Chapter 156 of the Laws of 1977 of the State of New Jersey, Purporting to Preclude the Integration of Workers' Compensation Benefits With Normal Retirement Benefits..	11
CONCLUSION	15

PREVIOUS PAGE WAS BLANK

TABLE OF AUTHORITIES

Cases Page

Azzaro v. *Harnett*, 414 F. Supp. 473 (S.D.N.Y. 1976), *aff'd mem.*, 553 F.2d 93 (2d Cir.), *cert. denied*, 434 U.S. 824 (1977) 14
Batterton v. *Francis*, 432 U.S. 416 (1977) 8
Bell v. *Employee Security Benefit Association*, 437 F. Supp. 382 (D. Kan. 1977) 14
Greyhound Corp. v. *Mt. Hood Stages, Inc.*, 437 U.S. 322 (1978) 12
Hewlett-Packard Co. v. *Barnes*, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978) 13, 14
Lofty v. *Richardson*, 440 F.2d 1144 (6th Cir.), *cert. denied*, 404 U.S. 985 (1971) 8, 9, 10
National Carriers' Conference Committee v. *Heffernan*, 454 F. Supp. 914 (D. Conn. 1978) 12, 13
Pervel Industries, Inc. v. *Connecticut Commission on Human Rights & Opportunities*, 603 F.2d 214 (2d Cir. 1979), *aff'g mem.* 468 F. Supp. 490 (D. Conn. 1978), *cert. denied*, 444 U.S. 1031 (1980) 14
Standard Oil Co. v. *Agsalud*, —— F.2d ——, 318 Pens. Rep. (BNA) D-1 (9th Cir. 1980) 14
Utility Workers Union of America, AFL-CIO v. *Consumers Power Co.*, No. 78-1402 (6th Cir., filed Jan. 6, 1981), *petition for reconsideration en banc pending* 7, 8, 9
Wadsworth v. *Whaland*, 562 F.2d 70 (1st Cir. 1977), *cert. denied*, 435 U.S. 980 (1978) 14
Wayne Chemical, Inc. v. *Columbus Agency Service Corp.*, 426 F. Supp. 316 (N.D. Ind.), *aff'd as modified*, 567 F.2d 692 (7th Cir. 1977) 14

Statutes

Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, *et seq.* ..... *passim*
29 U.S.C. §§ 1021-1026 14
29 U.S.C. § 1053(a) 2, 3, 11

TABLE OF AUTHORITIES—Continued

Page

29 U.S.C. § 1102(a) 14
29 U.S.C. § 1102(b) 14
29 U.S.C. § 1103 14
29 U.S.C. §§ 1104-1106 14
29 U.S.C. §§ 1106-1107 14
29 U.S.C. § 1109 14
29 U.S.C. § 1111 14
29 U.S.C. § 1112 14
29 U.S.C. §§ 1131-1132 14
29 U.S.C. § 1144 ..... 2, 5, 11
29 U.S.C. § 1144(a) 2, 12, 14
29 U.S.C. § 1144(b)(2)(A) 12

Internal Revenue Code of 1954

26 U.S.C. § 401(a)(5) 2, 5, 8, 11
26 U.S.C. § 401(a)(15) 8
26 U.S.C. § 411 2

N.J. Stat. Ann. 34:15-29, *as amended by* Ch. 156 of the Laws of 1977 ..... 3, 5, 11

Social Security Act

42 U.S.C. § 424a 9

Revenue Rulings

Rev. Rul. 68-243, 1968-1 C.B. 167 6
Rev. Rul. 78-178, 1978-1 C.B. 117 7

Rules

Supreme Court Rule 36 i

Regulations

26 C.F.R. § 1.411(a)-4(a) (1979) 7

Legislative History

H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 277 (1974) 6

TABLE OF AUTHORITIES—Continued

	Page
H.R. Rep. No. 807, 93d Cong., 2d Sess. 3 (1974)	ii
S. Rep. No. 383, 93d Cong., 1st Sess. 2-3 (1973)	ii
Senate Comm. on Labor and Public Welfare, Subcomm. on Labor, 94th Cong., 2d Sess., Legislative History of the Employee Retirement Income Security Act of 1974 (Three Volumes) (1976)	
Volume III, pages:	
4544	6
4670	13
4745	13
4770	13
Other Authorities	
U.S. Dep't of Labor Opinion Letter (P/Opinion 76-90) (July 14, 1976)	13
Int. Rev. Serv., Pub. No. 778, Guides for Qualification of Pension, Profit Sharing and Stock Bonus Plan (1972)	6
Statement of Gregory J. Ahart, Director, Human Resources Division, United States General Accounting Office, Before the Subcomm. on Retirement Income and Employment of the House Select Comm. on Aging, Comm. Pub. No. 95-138, 95th Cong., 2d Sess. 5-6 (Feb. 27, 1978)	ii

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-193

HENRY BUCZYNSKI, ALEX BORUSOVIC and OTHER RETIREES SIMILARLY SITUATED,
Petitioners,

v.

THE GENERAL MOTORS CORPORATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF *AMICUS CURIAE* OF THE ERISA INDUSTRY COMMITTEE (ERIC) IN SUPPORT OF THE RESPONDENT

The ERISA Industry Committee (ERIC) hereby submits this brief in Case No. 80-193 urging affirmance of the decision of the United States Court of Appeals for the Third Circuit entered in this case on February 15, 1980.

INTEREST OF THE *AMICUS CURIAE*

A statement describing ERIC and its interest in this case is set forth in the preceding motion requesting leave to file this brief *amicus curiae.*

POSITION OF THE *AMICUS CURIAE*

The opinion below asserts the proposition that ERISA § 203(a), 29 U.S.C. § 1053(a) does not preclude the integration of workers' compensation benefits with benefits payable under an employer's private pension plan. The opinion below also held that a state statute prohibiting private pension plans from integrating benefits payable thereunder with workers' compensation benefits is preempted by ERISA § 514(a), 29 U.S.C. § 1144(a). ERISA § 203(a), 29 U.S.C. § 1053(a), sets forth the vesting requirements that must be satisfied by ERISA-covered employees. Section 203(a) and its counterpart in the Internal Revenue Code ("I.R.C."), § 411, 26 U.S.C. § 411, do not govern the structure of the accrued benefit. Rather I.R.C. § 401(a)(5), 26 U.S.C. § 401(a)(5) authorizes the integration of social security benefits and workers' compensation benefits with private pension plan benefits. Furthermore, ERISA § 514, 29 U.S.C. § 1144 provides that ERISA preempts any and all state laws that purport to regulate the terms and conditions of an ERISA-covered employee benefit plan. Thus the lower court decision correctly interpreted the statutory provisions of ERISA relating to nonforfeiture, the accrued benefit and preemption.

The decision of the Court of Appeals for the Third Circuit below presents important questions of fed-

eral law concerning the interpretation of the nonforfeiture provisions of ERISA and the preemptive effects of ERISA upon a state's power to regulate terms and conditions of private employee benefit plans. It is the position of this *Amicus Curiae* that the lower court correctly interpreted ERISA statutory provisions and correctly recognized the preemptive effect of the federal Act. If the lower court decision in *Buczynski* is not upheld it will have a significant impact on plan sponsors and may well affect the stability of the private pension system, a system that allows private employers to voluntarily establish pension plans to provide income to employees during retirement. Such system should be interpreted to encourage, rather than discourage, employers to establish employee pension plans.

Any interpretation of ERISA § 203(a), 29 U.S.C. § 1053(a), that results in barring the integration of workers' compensation benefits and pension plan benefits, thus allowing duplication of benefits, could create a chilling effect and thus discourage employers from establishing private pension plans or raising benefit levels of existing pension plans.

Further, under ERISA's preemption provision, Congress sought to avoid the existing voluminous litigation involving pension plans and conflicting state laws such as N.J. Stat. Ann. 34:15-29 as amended by Chapter 156 of the Laws of 1977 of the State of New Jersey. The broad preemption provisions of ERISA were intended to provide a uniform basis of federal regulation so that plan sponsors, such as those represented in ERIC, who generally operate uniform employee benefit programs for their employees which cross state boundaries, would be gov-

erned by only one set of laws. ERIC members are deeply concerned that if the lower court decision is not upheld, the intent of Congress to create and support a uniform scheme regulating employee benefits will be frustrated. To subject pension plans to the varying laws of 50 state jurisdictions will invariably result in a fragmented scheme of conflicting federal and state regulation of employee benefit plans, an evil which Congress intended to avoid with ERISA's preemption provisions.

The explicit language of ERISA and the broad scope of the preemption provisions were intended to avoid conflicts in laws which result in piecemeal regulation of employee plans. In the final analysis, the victims of a fragmented scheme of federal and multistate regulation of benefit plans are likely to be employees. Already faced with mounting costs, unwieldy administrative burdens and proliferating litigation, some sponsors will be forced to utilize plan assets, otherwise earmarked for benefits, to meet the expenses caused by a fragmented scheme of regulation. Other plan sponsors may actually curtail the level of benefits provided to employees.

SUMMARY OF ARGUMENT

Amicus ERIC does not seek herein to comprehensively analyze the statutory provisions and legislative history of ERISA relating to nonforfeiture and provisions of the I.R.C. authorizing the integration of workers' compensation benefits with private pension plan benefits. Rather, this brief sets forth the policy arguments justifying such benefit integration and emphasizes that ERISA must be interpreted with consideration given to Congressional intent to pro-

vide a favorable setting for the growth and development of private pension plans. It is axiomatic that pension plans cannot be expected to develop if costs are made overly burdensome, particularly for employers who generally pay all costs.

Amicus ERIC emphasizes that Congress intended the broadest possible federal preemption in the enactment of ERISA § 514, 29 U.S.C. § 1144, as its legislative history clearly shows. Thus, provisions of Chapter 156 of the Laws of 1977 of the State of New Jersey purporting to preclude the integration of workers' compensation benefits with normal retirement pension benefits must be preempted and cannot be permitted to impact the terms and conditions of private pension plans.

ARGUMENT

I. ERISA § 203(a) Does Not Preclude the Integration of Workers' Compensation Benefits With Private Pension Plan Benefits

Section 165(a)(5) of the Internal Revenue Code of 1939 expressly authorized private pension plans to take into account social security benefits and other "retirement benefits created under State or Federal law." Section 165(a)(5) continues in existence as § 401(a)(5) of the 1954 Internal Revenue Code, 26 U.S.C. § 401(a)(5).

I.R.C. § 401(a)(5) provided prior to the enactment of ERISA and continues to provide that a plan will not be considered discriminatory merely because contributions or benefits of or on behalf of employees under the plan "differ because of any retirement benefits created under State or Federal law." In 1968

the Internal Revenue Service in defining the phrase "retirement benefits under State or Federal law" held that "benefits payable under a workmen's compensation law or occupational diseases law . . . are acceptable as an offset against benefits payable under a qualified pension plan." *See* Rev. Rul. 68-243, 1968-1 C.B. 167. The substance of Rev. Rul. 68-243 was incorporated in the 1972 edition of the "Guides for Qualification of Pension, Profit Sharing and Stock Bonus Plan," IRS Publication 778.

Congress in enacting ERISA specifically intended that antidiscrimination rules in effect prior to the enactment of ERISA remain in effect. The Conference Committee Report provided:

> Moreover, the conferees intend that the antidiscrimination rules of present law in areas other than the vesting schedule are not to be changed. Thus, the present antidiscrimination rules with respect to coverage, and with respect to contributions and benefits are to remain in effect. Also, the antidiscrimination rules may be applied with respect to benefit accruals.

H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 277 (1974), *reprinted in* Senate Comm. on Labor and Public Welfare, Subcomm. on Labor, 94th Cong., 2d Sess., Legislative History of the Employee Retirement Income Security Act of 1974 (Three Volumes) (1976), Vol. III, at 4544 [hereinafter cited as ERISA Leg. Hist.].

Subsequent to the enactment of ERISA the Secretary of the Treasury confirmed by regulation:

> Furthermore, nonforfeitable rights are not considered to be forfeitable by reason of the fact

> that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits.

26 C.F.R. § 1.411(a)-4(a) (1979).

The Internal Revenue Service in Rev. Rul. 78-178, 1978-1 C.B. 117, left no doubt that workers' compensation benefits may be integrated with private pension plan benefits.

Any determination of the validity of the regulation must initially concern its character. Both the lower court, and the United States Court of Appeals for the Sixth Circuit in *Utility Workers Union of America, AFL-CIO* v. *Consumers Power Co.*, No. 78-1402 (6th Cir., filed Jan. 6, 1981), *petition for reconsideration en banc pending*, recognized the Treasury Regulation as legislative in character rather than an interpretative regulation:

> In the recent case of *General Motors* v. *Buha*, —— F.2d —— (6th Cir. 1980), this Circuit held that Treasury Regulation § 1.401(a)-13 was a legislative rather than an interpretative regulation, and that as such the regulation was entitled to considerable deference by the judiciary. (Regulation § 1.401(a)-(13) was issued pursuant to the authority of 29 U.S.C. § 1202 (c), the section that is the authoritative basis for Treasury Regulation § 1.401-4(6) and § 1.411 (a)-4(a), *supra.*)

Id., slip. op. at 12.

Further, both the lower court and the Sixth Circuit in *Consumers Power* agreed that all Treasury

interpretations, legislative or otherwise, must be set aside if the interpretation is " 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' " *Batterton* v. *Francis*, 432 U.S. 416, 426 (1977).

The Court in *Consumers Power*, *supra*, thereafter reached the erronoeus conclusion that interpretation of the Treasury, allowing integration of workers' compensation benefits with private pension plan benefits, was "at odds both with the statutory language of ERISA and with its legislative history." *Utility Workers Union of America, AFL-CIO* v. *Consumers Power Co.*, *supra*, slip op. at 13. In reaching this conclusion the Sixth Circuit failed to recognize I.R.C. § 401(a)(5) as authority for both social security integration and workers' compensation benefit integration. Rather, the *Consumers Power* court found that I.R.C. § 401(a)(15), 26 U.S.C. § 401(a)(15), impliedly authorized integration of social security benefits with private pension plan benefits. *Id.*, slip op. at 8. Thus, the Sixth Circuit reasoned: "certain offsets (i.e., offsets that are comparable to an offset for social security payments) are reductions in benefits that do not violate the vesting requirements of section 203." *Id.*, slip op. at 8.

Next the Sixth Circuit failed to consider workers' compensation benefits and social security benefits "like" benefits for purposes of ERISA. *Id.*, slip op. at 17. The Court apparently took no notice of its prior decision in *Lofty* v. *Richardson*, 440 F.2d 1144 (6th Cir.), *cert. denied*, 404 U.S. 985 (1971), reaching the opposite result.

The Court in *Lofty* v. *Richardson* upheld the integration of workers' compensation benefits with so-

cial security benefits authorized by 42 U.S.C. § 424a and defended such integration by recognizing the similarity between benefits:

> Finally, it is entirely conceivable to us that Congress may have considered Social Security benefits and Workmen's Compensation benefits to be more arguably duplicative of one another than could appropriately be claimed concerning Social Security benefits and the other two types of payments. Both Social Security and Workmen's Compensation programs are social welfare legislation. Private accident or disability insurance is a private contract, frequently paid for entirely by the recipient. And, of course, court awards for injuries are private rights derived from the common law involving the principle of compensation for negligence or fault.
>
> Most of the argument for the Workmen's Compensation off-set came from employers who generally pay all of the costs for Workmen's Compensation and half of the costs of the Social Security benefits. Their argument before Congress was that they were paying twice for the same injury. This argument would have, of course, no merit at all in relation to a damage action award or to the proceeds of privately purchased accident or disability insurance.

440 F.2d 1144, 1151-2. Arguably, had the Sixth Circuit in *Consumers Power*, *supra*, followed its rationale in *Lofty* v. *Richardson*, it would have reached the opposite result upholding the validity of integration of workers' compensation benefits with private pension benefits.

The integration of workers' compensation benefits with pension benefits is clearly consistent with the

provisions of ERISA and its legislative history. Workers' compensation statutes provide benefits to disabled employees when the disability occurs in the course of employment. The benefits are payable regardless of employee fault. The workers' compensation benefit generally is fully funded by the employer. On the other hand, only one-half of the cost of social security benefits is paid by the employer.

Because workers' compensation generally is "no fault" legislation and thus may provide benefits to a disabled employee who became so through his own negligence, no distinction should be made between disabilities arising from employment and those arising outside of employment. The individual who becomes disabled in the course of employment should not receive more in retirement benefits than the individual who becomes disabled as a result of a non-work related injury.

Furthermore, if the employer is permitted to integrate private pension plan benefits with social security benefits, including social security disability payments, more justification exists for integration of workers' compensation benefits with pension benefits because workers' compensation is fully funded by the employer. Additionally, the establishment of private pension plans and the determination of benefit levels therein is voluntary. If the employer is not allowed to structure the accrued benefit to avoid duplication of benefits resulting in higher income while not working than while working, the incentive to establish plans will diminish. *See Lofty* v. *Richardson, supra,* 440 F.2d 1144, 1149, Chart I.

Accordingly, *Amicus* ERIC contends that the lower court decision should be affirmed and that the hold-

ing that ERISA § 203(a), 29 U.S.C. § 1053(a) does not preclude the integration of workers' compensation with private pension benefits as authorized by I.R.C. § 401(a)(5), 26 U.S.C. § 401(a)(5) is correct, consistent with ERISA statutory provisions and its legislative history.

II. ERISA Preempts State Regulation of Employee Benefit Plans Including N.J. Stat. Ann. 34:15-29, As Amended By Chapter 156 of the Laws of 1977 of the State of New Jersey, Purporting to Preclude the Integration of Workers' Compensation Benefits With Normal Retirement Benefits

On July 14, 1977, the New Jersey legislature enacted Chapter 156 of the Laws of 1977 (Chapter 156), amending N.J. Stat. Ann. 34:15-29 to include a provision that:

> The right of compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments.

Amicus ERIC contends that this legislation represents an invalid attempt to regulate ERISA covered employee pension benefit plans. Such regulation is preempted by Congress through the enactment of ERISA.

ERISA's broad preemption provision is set forth in Section 514, 29 U.S.C. § 1144, which provides:

> (a) [T]he provisions of this title (Title I) and Title IV shall supersede *any and all State laws* insofar as they may now or hereafter relate to any employee benefit plan described in Section 4(a) and not exempt under Section 4(b).
>
> * * * *

> (c) For purposes of this section: (1) The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.
>
> * * * *
>
> (2) The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, *which purports to regulate directly or indirectly, the terms and conditions of employee benefit plans covered by this title.* (Emphasis added.)

The phrase "any and all" found in Section 514 plainly indicates an intention to preempt *every* state statute, rule or action that fits the description of "relating to" an employee benefit plan. *National Carriers' Conference Committee* v. *Heffernan*, 454 F.Supp. 914 (D. Conn. 1978). A state statute attempting to regulate the structure of the accrued benefit of an ERISA-covered pension plan most assuredly "relates to" the plan.

As this Court has recently stated, "[L]ogic and precedent dictate that '[t]he starting point in every case governing construction of a statute is the language itself.'" *Greyhound Corp.* v. *Mt. Hood Stages, Inc.*, 437 U.S. 322, 330 (1978). The language of ERISA on its face clearly evidences Congress' intent to preempt any state law, including the New Jersey law in question here, which relates to employee benefit plans.

The broad preemptive thrust of Section 514(a) is explicitly limited only by Section 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), which contains certain specific exceptions relating to state insurance, banking and securities laws which are not relevant here.

Any argument that ERISA preemption provisions should be narrowly construed cannot stand; as stated by the federal court in *National Carriers'*, *supra*, 451 F.Supp. at 915:

> The contention that ERISA preemption should be narrowly construed . . . is undermined by Congress' specific identification of areas of state legislation that were not to be preempted.

The broad scope of ERISA's preemption provisions is further clearly underscored by the extensive ERISA legislative history [1] as enunciated by the explicit statements of Senator Williams, Senator Javits and Congressman Dent, the principal drafters of ERISA.[2] This legislative history, along with federal interpretations [3] confirms the major reasons for broad preemption: (1) the need to prevent conflicting regulations over interstate plans, (2) the desire to avoid the litigation that would result from piecemeal preemption, and (3) the emergence of a pervasive fed-

---

[1] ERISA was the culmination of years of intense study, investigation, hearings and debates which involved three Cabinet departments, four Congressional committees, and countless employee organizations, associations, corporations, and private citizens, as well as State officials. A substantial portion of the Congressional testimony dealt with the preemption issue. *See Hewlett-Packard Co.* v. *Barnes*, 425 F. Supp. 1294, 1298 & n.12 (N.D. Cal. 1977), *aff'd*, 571 F. 2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978).

[2] ERISA Leg. Hist., Vol. III, at 4670, 4745, 4770, quoting Congressman Dent, Senator Williams, and Senator Javits, respectively.

[3] *See* U.S. Dep't of Labor Opinion Letter (P/Opinion 76-90) (July 14, 1976), set forth in full, *infra*, in an appendix to this *amicus* brief.

eral interest in employee benefit plans.[4] Moreover, the courts have consistently interpreted the preemption provision in its "broadest sense." [5]

Accordingly, the simple and straightforward meaning of Section 514(a) is that Title I and IV of ERISA, by their very existence, end the operative effect of any and all State laws relating to employee benefit plans. Accordingly, ERISA has preempted New Jersey law purporting to preclude the integra-

---

[4] ERISA requires federal reporting and disclosure to employees (29 U.S.C. §§ 1021-1026), and imposition of fiduciary duties upon plan administrators (29 U.S.C. § 1104-1106, 1109, 1111 and 1112). ERISA also provides criminal penalties and civil enforcement (29 U.S.C. §§ 1131-1132), requires that plans be established pursuant to a written contract (29 U.S.C. § 1102(a)), and includes procedures for allocation of administrative responsibilities and payment of funds into and out of the plan (29 U.S.C. § 1102(b)). Moreover, all funds are required to be held in trust (29 U.S.C. § 1103), and the trustees are prohibited from engaging in certain transactions involving plan assets (29 U.S.C. §§ 1106-1107).

[5] Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294, 1300 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978); Standard Oil Co. v. Agsalud, —— F.2d ——, 318 Pens. Rep. (BNA) D-1 (9th Cir. 1980); Wadsworth v. Whaland, 562 F.2d 70, 77 (1st Cir. 1977), *cert. denied*, 435 U.S. 980 (1978); Bell v. Employee Security Benefit Ass'n, 437 F. Supp. 382, 385-88 (D. Kan. 1977); Wayne Chemical, Inc. v. Columbus Agency Serv. Corp., 426 F. Supp. 316, 321 (N.D. Ind.), *aff'd as modified*, 567 F.2d 692 (7th Cir. 1977); Azzaro v. Harnett, 414 F. Supp. 473, 474 (S.D.N.Y. 1976), *aff'd mem.*, 553 F.2d 93 (2d Cir.), *cert. denied*, 434 U.S. 824 (1977); Pervel Indus., Inc. v. Connecticut Comm'n on Human Rights & Opportunities, 603 F.2d 214 (2d Cir. 1979), *aff'g mem.* 468 F. Supp. 490 (D. Conn. 1978), *cert. denied*, 444 U.S. 1031 (1980).

tion of workers' compensation benefits and private pension benefits.

CONCLUSION

The lower court's decision is consistent with provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, consistent with its legislative history and consistent with provisions of the Internal Revenue Code and Treasury Regulations promulgated thereunder.

For all the foregoing reasons, this *Amicus Curiae* respectfully urges this Court to uphold the decision of the lower court.

Respectfully submitted,

GEORGE J. PANTOS
VEDDER, PRICE, KAUFMAN,
KAMMHOLZ & DAY
1919 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Counsel of Record
for Amicus Curiae
ERISA Industry Committee

Dated: January 30, 1981

APPENDIX

P/OPINION 76-90

DEPT. OF LABOR
Letter of Opinion

RE: California

July 14, 1976

Dear

It has been brought to the attention of this office that the (Named) Health Care Service Plan Act of 1976, has recently gone into effect in the state of (deleted). We have undertaken a comprehensive review of the (Named) Act, and have noted your tentative conclusion, as stated in your April 16, 1976 Notice of Hearing, that "*employer 'self-insured'* or 'self-administered' health care plans for employees are health care service plans subject to licensing under the Act." (Emphasis in the Notice of Hearing).

The Department of Labor is charged with administration and enforcement of certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, *et seq.* Among such provisions is § 514(a) of ERISA which provides:

EFFECT ON OTHER LAWS

> Sec. 514(a) Except as provided in subsection (b) of this section, the provisions of this title and Title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

The effect of this section is to preempt all state laws which *relate to* employee benefit plans subject to the coverage of Title I or ERISA (Protection of Employee Benefit Rights), whether such state laws conflict with the terms of the federal legislation or would merely supplement the federal scheme. The coverage of ERISA extends to employee benefit plans established or maintained by employers engaged in commerce, or by employee organizations representing employees so engaged. ERISA § 4(a). The term "employee benefit plan" encompasses both pension plans and welfare plans. Included in the definition of welfare plans found in § 3(1) of ERISA are plans established or maintained by employers or employee organizations, or both, for the purpose of providing "medical, surgical or hospital care or benefits" to their participants and beneficiaries.

The (Named) Act may be read, particularly in conjunction with your April 16, 1976 *Notice*, to be applicable to employee welfare benefit plans now subject to the coverage of ERISA. It is the view of the Department of Labor that to the extent that the (Named) Act may be applicable by its terms to such ERISA-covered plans, the Act is preempted by § 514 of ERISA. The reasons for broad preemption of State laws under ERISA were succinctly stated by Senator Williams, a major sponsor and floor manager of the bill, during its final consideration.

> Both the House and Senate bills provided for preemption of State law, but—with one major exception appearing in the House Bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the

> validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme. Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required —but for certain exceptions—the displacement of State action in the field of private employee benefit programs. 120 Cong. Rec. S15751 (daily ed. Aug. 22, 1974).

The major reasons for broad preemption disclosed in these remarks include (1) the need to prevent conflicting regulation over interstate plans, (2) the desire to avoid the litigation that would result from piecemeal preemption, (3) the emergence of a pervasive Federal interest in employee benefit plans, and (4) the existence of a comprehensive federal program for future study (see § 3022).

The (Named) Act is replete with provisions of the type that gave rise to these concerns. They include, but are not limited to, specification of mandatory health care services and coverage (§ 513671, 1373(c) and (d); annual reporting requirements (§§ 1371, 1383); approval of plan financial responsibility (§ 1372); and regulatory authority to control handling of plan assets (§ 1376). Most troublesome is the overall requirement that plans subject to the Act must be licensed and approved by the State.

Should it be determined that the (Named) Act is applicable by its terms to employee welfare benefit plans subject to the coverage of ERISA, the nature of the former would mandate a conclusion that it is a state law relating to employee benefit plans within the meaning of § 514 of ERISA. As such, the (Named) Act would be preempted by ERISA to the extent it would otherwise be applicable to ERISA-covered plans.

I hope that this information and the expression of our views will be of assistance to you in your implementation of the (Named) Act within the limits of federal law. I would appreciate an expression of your response to the position outlined above.

Sincerely,